MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2313 OF 2005

IN

SUIT NO. 1454 OF 1996

ASHOK SANCHETTI .. PLAINTIFF

Vs.

INDO-GERMAN CHAMBER OF COMMERCE & ORS. .. DEFENDANTS

None for plaintiff
Ms. Ramya P.Mahesh i/b Little & Co. for defendant 1.
Mr. Christopher D'souza i/b Crawford Bayley & Co. for D-2

CORAM: **SMT. RANJANA DESAI, J.**

DATE: AUGUST 10, 2007.

P.C.

. This notice of motion was on my board yesterday i.e. on 9/8/07. The learned counsel for the plaintiff was not present. The learned counsel for 1st and 2nd defendants were present. Since the counsel for the plaintiff was not present, it was posted for hearing today. Today again the learned counsel for the plaintiff is not present.

2. This motion is filed by defendant 2 praying that order dated 4/9/02 passed by the Prothonotary & Senior Master be set aside and defendant 2 be

allowed to file written statement.

3. The suit is of the year 1996. Till date written statement is not filed. In support of the notice of motion an affidavit is filed by Ms. Aiyer, the advocate for defendant 2 instructed by M/s. Crawford Bayley & Co. Paragraph 2 of the said affidavit contains the gist of the explanation which reads as under:

. " I say that the Defendant No. 2 is a public limited Company incorporated under the laws of the Republic Of Germany having its office at 137-A, Rhinstrasse, Berlin - 103 15, Germany. I say that the Advocates for the Defendant No. 2 have diligently attended the above matter. I say that when the matter came up before the learned Prothonotary & Senior Master for filing the Written Statement, the Advocates for the Defendant No. 2, sought time to file the Written Statement. I say that the Advocates for the Defendant No. 2 made diligent efforts to contact the Defendant No. 2 but as the erstwhile Defendant No. 2 being Duho Verwaltung Gmbh had merged with TLG IMMOBILIEN GmbH and its address had changed, the contact could not be established. I say that even after the Advocate

for the Defendant No. 2 could establish a contact with the Defendant No. 2 Company, there was delay in getting final instructions from the Company as the new officers required time to study the papers and give their comments to the same. Thereafter , the concerned officers of the Defendant No. 2 had left the Company and their e-mail addresses had become invalid. The Advocates for the Defendant No. 2 could not therefore file the Written Statement."

4. In the peculiar facts and circumstances considering the fact that there is no objection kfrom the plaintiff and considering the explanation given on behalf of defendant 2, in my opinion. a case is made out for condonation of delay on condition that the 2nd defendant pays costs quantified at Rs.15,000/- within a period of four weeks a from today. Hence the following order:

. Order dated 4/9/02 passed by the Prothonotary & Senior Master is set aside. Defendant 2 is allowed to file its written statement. Written statement be filed within four weeks from today. The written statement will be taken on record by the office only if the 2nd defendant pays costs quantified at

Rs.15,000/- to the plaintiff.

. The 2nd defendant shall satisfy the office that costs as directed by this court are paid to the plaintiff. Upon being satisfied, the office shall take the written statement on file.

. Motion is disposed of.

JUDGE.